

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Assessment and Collection of)
Regulatory Fees For Fiscal)
Year 1995)

DOCKET FILE COPY ORIGINAL

MD Docket No. 95-3

ORIGINAL

AT&T REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's
Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") hereby submits
this reply in response to other parties' comments on the
Notice of Proposed Rulemaking in MD Docket No. 95-3
("Notice").¹

In its comments, AT&T urged the Commission to
replace the current fee multiplier for IXCs -- presubscribed
lines -- with a multiplier based on each carrier's relative
share of total IXC gross interstate revenues for the
preceding calendar year. A revenue-based allocator, as
compared to presubscribed lines, would result in a more
equitable distribution of the fees among entities within a
given industry (as Congress intended), would be consistent

¹ Assessment and Collection of Regulatory Fees for Fiscal
Year 1995, MD Docket No. 95-3, FCC 95-14, 60 Fed.
Reg. 3807 (1995). A list of the parties filing comments
and the abbreviations used to identify them herein is
annexed as Appendix A.

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with Commission policy as well as actions in analogous proceedings, and can be administered without imposing additional administrative burdens on the Commission or carriers. AT&T also noted that a revenue-based allocator is also preferable to a minutes-of-use ("MOUs") allocator (the alternative to presubscribed lines that the Commission proposes for consideration in the Notice, ¶ 60), because it will permit fees to be assessed in as competitively neutral a fashion as possible and will readily capture bulk-billed services (for example, high capacity and broadband) without having to rely on assumptions or projections.

Predictably, MCI and Sprint, AT&T's two largest interexchange competitors, urge the Commission to retain the current presubscribed line-based allocator, characterizing it as "fair," "accurate" and "cost effective."² It is, of course, none of these things. To the contrary, as AT&T showed, a line-based allocator does not accurately reflect various IXCs' share of switched services and thus does not result in an equitable allocation. Precisely because AT&T has proportionately more presubscribed lines than interstate revenues or minutes (as shown by the Commission's market share data), a line-based allocator results in AT&T's customers paying a disproportionate share of the Commission's total regulatory fee revenue requirement.³ MCI

² See MCI, pp. 1-3; Sprint, p. 2.

³ See AT&T, pp. 4-5.

and Sprint know this and thus urge the Commission to continue with the line-based allocator that is more advantageous for them. These carriers' self-interest provides no basis for continuing with a fee mechanism that distorts interexchange competition.⁴

A host of commenters confirm that the use of presubscribed lines is inequitable because it does not accurately capture market penetration of various carriers within the industry.⁵ Moreover, other commenters demonstrate that the use of "equivalent voice grade capacity provided" to capture non-switched services introduces tremendous complexities into the process and radically underestimates the use of private lines for data services. It thus disproportionately impacts competitive access providers ("CAPS") and others who rely predominantly on such services.⁶

By contrast, a revenue-based allocator would be simple to administer, could apply to both switched and

⁴ The Commission has often held that charges imposed upon IXCs must "not unduly favor some IXCs at the expense of others." See Petitions for Waiver of Various Sections of Part 69 of the Commission's Rules, Memorandum Opinion and Order, 104 F.C.C.2d 1132, 1180, ¶ 95 (1986) ("Alternative Access Charge Order"). The current presubscribed line-based regulatory fee allocation mechanism fails this fundamental requirement of nondiscrimination among competing IXCs.

⁵ See, e.g., NYNEX, pp. 1-2; U S WEST, p. 2.

⁶ See, e.g., Lightpath, pp. 1-2; MFS, pp. 1, 5; TCG, p. 1; see also NECA, pp. 2-3.

private line services without the need for cumbersome assumptions, and would result in a fair and verifiable allocation. Indeed, the same interstate revenue data already collected for Telecommunications Relay Services ("TRS") fund assessments could also be used for regulatory fees, as several parties note.⁷ For these reasons, a revenue-based allocator has received broad-based support in this and other proceedings.⁸

However, if (despite this strong support) the Commission does not adopt a revenue-based allocator for IXC regulatory fee assessments, it should adopt the MOUs-based allocator alternatively proposed in the Notice (§ 60). MOUs, unlike presubscribed lines, would at least result in IXCs being assessed regulatory fees based on their proportionate share of switched services usage and would not create disincentives to serve low volume users. At the same time, as certain commenters indicate, an allocator based on MOUs would be more complex to administer than one based on revenues, because it would require crossover assumptions in

⁷ See AT&T, pp. 6-7; NECA, p. 4; U S WEST, pp. 3, 6. See also Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Third Report and Order, 8 FCC Rcd. 5300, 5303, ¶ 16 (1993) (rejecting allocation mechanism based on providers' relative shares of switched services because it "would not account adequately for services that utilize dedicated facilities").

⁸ See AT&T, pp. 3-4 n.5 (citing Comments in Docket 80-286), 6-7; Lightpath, p. 5; MFS, p. 5; NECA, p. 4; SBC, pp. 2-4; TCG, p. 5; U S WEST, pp. 3, 6.

order to capture services that are not billed based on timed-usage.⁹ Moreover, if the Commission were to adopt the proposed MOUs allocator, a number of parties note that it should first correct an error in the rate calculation, which appears to be based on substantially understated demand.¹⁰

Several parties oppose the Commission's proposal to require resellers to pay regulatory fees, claiming that these carriers do not cause the Commission to incur expenses and that requiring resellers to pay them would amount to a double counting.¹¹ Contrary to the first contention, the Commission has properly included resellers among the entities to be assessed regulatory fees.¹² Like facilities-based carriers, resellers "directly benefit[] from [the Commission's] regulation of the interstate network" and the Commission's policies have "fostered the growth of a strong communications resale industry."¹³ As U S WEST points out, the "expansion of the class of responsible payees is a positive step toward the realization of a more equitable

⁹ Cf. Notice, ¶ 60; see also AT&T, p. 7; NECA, pp. 2-3; U S WEST, p. 2.

¹⁰ See AT&T, p. 8 n.14; MCI, pp. 4-5; NYNEX, pp. 3-4.

¹¹ See ACTA, in passim; AVIS, p. 2; GTE, pp. 6-7; Hertz, p. 5; LDDS, pp. 13-17; TRA, pp. 1, 7-8.

¹² See Allnet, p. 1; AT&T, p. 2 n.3; Bell Atlantic, p. 1 n.2; SBC, p. 2; U S WEST, p. 2.

¹³ Notice, ¶ 56.

distribution of the fees among entities within . . . [the] industry.'"¹⁴ Thus, resellers should not be categorically exempted from payment of regulatory fees. LDDS has suggested that the Commission apply "regulatory fees only to retail interexchange products and services" and to exempt those "products and service sold from one carrier to another for purposes of resale"¹⁵ Under this approach, facilities-based IXCs would net out sales to resellers (resale revenues, resale MOUs or resale presubscribed lines, depending on the Commission's final fee assessment formula) from the services subject to fee assessments and the reseller would pay the regulatory fee on the resold service. According to LDDS, this would eliminate potential "double counting" of regulatory fees as applied to resellers. AT&T has no objection to adoption of LDDS' proposal so long as implementation of this approach does not delay the proposed expansion of regulatory fees to resellers.

¹⁴ See U S WEST, p. 2, citing House Report on HR 1674 (H.R. Rep. No. 207, 102d Cong., 1st Sess. 1991, § 3).

¹⁵ See LDDS, p. 16.

CONCLUSION

AT&T and numerous other commenters urge the Commission to allocate the costs it incurs in regulating IXCs based on each carrier's share of gross interstate IXC revenues, as opposed to presubscribed lines. A revenue-based system will avoid anticompetitive discrimination among IXCs because it accurately reflects market shares in the industry, and will thus ensure that each IXC pays its "fair share." It will likewise avoid exacerbating the current disincentives to serve low volume customers. Finally, a revenue-based system can be administered without imposing additional burdens on the Commission or carriers, because the Commission can use for this purpose the same data it compiles in the process of assessing the revenue-based fees it collects for Telecommunications Relay Services. Alternatively, the Commission should adopt an MOUs-based allocator, which although more complex to administer (and hence less desirable) than a revenue-based allocator, would result in a more equitable distribution of regulatory fees among IXCs than one based on presubscribed lines.

The Commission has properly included resellers among the entities required to pay a regulatory fee.


- 8 -

Assessing fees only at the point of retail sale of an
interexchange service or product would eliminate any
potential double counting.

Respectfully submitted,

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February 28, 1995

APPENDIX A

1995 Regulatory Fees
MD Docket No. 95-3
Comments filed
February 13, 1995

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("Alltel")

America's Carriers Telecommunications Association ("ACTA")

American Public Communications Council ("APCC")

American Radio Relay League, Incorporated ("League")

Ameritech

Associated Press ("AP")

Association for Local Telecommunications Services ("ALTS")

AT&T Corp. ("AT&T")

Avis Rent A Car ("AVIS")

Beaverkettle Company, Inc. ("Beaverkettle")

Bell Atlantic on behalf of Bell Atlantic Mobile and the Bell
Atlantic Telephone Companies ("Bell Atlantic")

Bloomington Broadcasting Corporation ("Bloomington")

Broadcast Media Associates ("Broadcast")

Cable Telecommunications Association ("CATA")

Cablevision Industries Corp., Multimedia Cablevision, Inc.,
Providence Journal Company and Star Cable Associates ("Cable
Companies")

Cable Vision Lightpath, Inc. ("Lightpath")

Cellular Telecommunications Industry Association ("CTIA")

Century Cellunet, Inc. ("Century")
Clements III, Thomas ("Clements")
Columbia Communications Corporation ("Columbia")
Competitive Telecommunications Association ("CompTel")
Comsat General Corporation ("Comsat General")
Comsat Video Enterprises, Inc. ("CVE")
De La Hunt Broadcasting Corporation ("De La Hunt")
Duhamel Broadcasting Enterprises ("Duhamel")
EDS Corporation ("EDS")
Fant Broadcasting Company of Nebraska, Inc. ("Fant")
Frontier Cellular Holding Inc. ("Frontier Cellular")
GE American Communications, Inc. ("GE Americom")
GTE Service Corporation on behalf of its affiliated domestic
telephone, equipment and service companies ("GTE")
Hertz Technologies, Inc. ("Hertz")
KUSK, Inc. ("KUSK")
KBZQ-FM
KVPA-FM
KVRW-FM
LDDS Communications, Inc. ("LDDS")
Livingston Radio Corporation ("Livingston")
Maine Association of Broadcasters ("MAB")
MCI Telecommunications Corporation ("MCI")
MFS Communications Company, Inc. ("MFS")
Mid-State Television, Inc. and WNAL-TV, Inc.

MobileMedia Communications, Inc. ("MobileMedia")
Montana Broadcasters Association ("MBA")
National Association of Broadcasters ("NAB")
National Cable Television Association, Inc. ("NCTA")
National Exchange Carrier Association ("NECA")
Northern Broadcast, Inc. ("Northern")
NYNEX Companies ("NYNEX")
PanAmSat, L.P. ("PanAmSat")
Personal Communications Industry Association ("PCIA")
Radio 840, Inc. ("840")
Southwestern Bell Corporation ("SBC")
Sovereign Broadcasting, Inc. ("Sovereign")
Sprint Corporation, on behalf of Sprint Communications Company,
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Cellular ("Sprint")
Stellar Communications, Inc. ("Stellar")
Telecommunications Resellers Association ("TRA")
Teleport Communications Group Inc. ("TCG")
United States Coast Guard ("USCG")
U S WEST Communications, Inc. ("U S WEST")
Wagner, James P. ("Wagner")
Washington Broadcasting Company ("Washington")
Wireless Cable Association International, Inc. ("WCAI")
Withers Broadcasting Company of Texas ("Withers")

CERTIFICATE OF SERVICE

I, Helen Elia, certify that on this 28th day of February, 1995, a true copy of the foregoing "AT&T Reply Comments" was served by first class mail, postage prepaid, upon each of the parties on the attached service list.



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